

this part on which petitioner wishes to participate; and

(v) Whether petitioner intends to present witnesses.

(2) The administrative law judge shall, within 5 days of receipt of the petition, ascertain what objections, if any, there are to the petition. He shall then determine whether the petitioner is qualified in his judgment to be a party in the proceedings and shall permit or deny participation accordingly. The administrative law judge shall give each petitioner written notice of the decision on his petition promptly. If the petition is denied, the notice shall briefly state the grounds for denial. Persons whose petition for party participation is denied may appeal the decision to the Secretary within 5 days of receipt of the notice of denial. The Secretary will make the final decision to grant or deny the petition no later than 20 days following receipt of the appeal.

(3) Where the petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may require all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners.

#### **§ 1955.18 Provision for written comments.**

Any person who is not a party may submit a written statement of position with 4 copies to either the Assistant Secretary or the State at any time during the proceeding which statement shall be made available to all parties and may be introduced into evidence by a party. Mere statements of approval or opposition to the plan without any documentary support shall not be considered as falling within this provision.

### **Subpart C—Consent Findings and Summary Decisions**

#### **§ 1955.20 Consent findings and orders.**

(a)(1) At any time during the proceeding a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of

the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the administrative law judge, after consideration of the requirements of section 18 of the Act, the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues.

(2) Any agreement containing consent findings and a rule or order disposing of a proceeding shall also provide:

(i) That the rule or order shall have the same force and effect as if made after a full hearing;

(ii) A waiver of any further procedural steps before the administrative law judge and the Secretary; and

(iii) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(b)(1) On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(i) Submit the proposed agreement to the administrative law judge for his consideration; or

(ii) Inform the administrative law judge that agreement cannot be reached.

(2) In the event an agreement containing consent findings and a rule or order is submitted within the time allowed therefor, the administrative law judge may accept such agreement by issuing his decision based upon the agreed findings. Such decision shall be published in the FEDERAL REGISTER.

#### **§ 1955.21 Motion for a summary decision.**

(a)(1) Any party may move, with or without supporting affidavits, for a summary decision on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or file a cross motion for summary decision. The administrative law judge may, in his discretion, set the matter for argument and call for submission of briefs. The filing of any documents under this section shall be with the administrative law judge and copies of any such

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document shall be served on all the parties.

(2) The administrative law judge may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Affidavits shall set forth such facts as would be admissible in evidence in the hearing and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in paragraph (a)(1) of this section, the party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(3) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the administrative law judge may refuse the application for summary decision or may order a continuance to permit affidavits to be obtained, or depositions to be taken, or discovery to be had, or may make such other order as is just.

(b)(1) The denial of all or any part of a motion or cross motion for summary decision by the administrative law judge shall not be subject to interlocutory appeal to the Secretary unless the administrative law judge certifies in writing:

(i) That the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(ii) That an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(2) The allowance of such an interlocutory appeal shall not stay the proceeding before the administrative law judge unless the Secretary so orders.

### § 1955.22 Summary decision.

(a)(1) Where no genuine issue of material fact is found to have been raised, the administrative law judge shall issue an initial decision to become

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final 30 days after service thereof upon each party unless, within those 30 days, any party has filed written exceptions to the decision with the Secretary. Requests for extension of time to file exceptions may be granted if the requests are received by the Secretary no later than 25 days after service of the decision.

(2) If any timely exceptions are filed, the Secretary may set a time for filing any response to the exceptions with supporting reasons. All exceptions and responses thereto shall be served on all the parties.

(b)(1) The Secretary, after consideration of the decision, the exceptions, and any supporting briefs filed therewith and any responses to the exceptions with supporting reasons, shall issue a final decision.

(2) An initial decision and a final decision under this section shall include a statement of:

(i) Findings of fact and conclusions of law and the reasons and bases therefor on all issues presented;

(ii) Reference to any material fact based on official notice; and

(iii) The terms and conditions of the rule or order made.

The final decision shall be published in the FEDERAL REGISTER and served on all the parties.

(c) Where a genuine material question of fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing. A notice of such hearing shall be published in the FEDERAL REGISTER at least 30 days prior to the hearing date.

### Subpart D—Preliminary Conference and Discovery

#### § 1955.30 Submission of documentary evidence.

(a) Where there has been no consent finding or summary decision under subpart C of this part and a formal hearing is necessary, the administrative law judge shall set a date by which all documentary evidence, which is to be offered during the hearing, shall be submitted to the administrative law judge and served on the other parties. Such submission date shall be sufficiently in advance of the hearing as to permit